

U.S. DEPARTMENT OF JUSTICE
Civil Division, Torts Branch
C. SALVATORE D'ALESSIO, JR.
Senior Trial Attorney
VIRGINIA G. LAGO
Attorney Advisor
Constitutional Torts Staff
Virginia Bar No. 25017
P.O. Box 7146, Ben Franklin Station
Washington, DC 20044-7146
Facsimile: (202) 616-4314
Email: *Virginia.Lago@usdoj.gov*
Telephone: (202) 616-4328

Attorneys for the Individual Federal Defendants,
Alex R. Munson, David A. Wiseman, Craig Moore,
Margarita D.L.G. Wonenberg, Melinda Brunson,
Joseph Auther, Donald Hall and Wolf Calvert

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

John S. Pangelinan,

Plaintiff,

v.

David A. Wiseman, et al.,

Defendants.

Civil Action No. 1:08-CV-04

**Response to Plaintiff's *Ex Parte* Motion to Strike
the Federal Defendants Reply in support of their
Motion to Dismiss Without Leave to Amend**

The Honorable Frances M. Tydingco-Gatewood

COMES NOW the individual federal defendants, by and through their undersigned counsel, and respectfully submit the following response in opposition to plaintiff's *ex parte* motion to strike the reply brief filed in support of the federal defendants' motion to dismiss.

The Individual Federal Defendants' Reply was Timely Filed

In accordance with LR 5.1, this Court has authorized filing, signing, verification, and service of documents by electronic means. The record in this case reflects that pursuant to LR 5.1, the individual federal defendants electronically filed their reply in support of their Motion to Dismiss Without Leave to Amend on April 17, 2008 (E.D.T.). *See* Docket Entry 45. Thus, the reply was timely filed "no later than Thursday in the week following the week in which the opposition was filed" pursuant to this court's rules. *See* LR 7.1(c)(3).

1 However, because plaintiff is not a "Filing User" for purposes of this court's electronic
 2 filing system, service on plaintiff was made pursuant to Fed. R. Civ. P. 5(b)(2)(C), by mailing a
 3 copy of the individual defendants' reply to his last known address on April 23, 2008 (E.D.T.). A
 4 certificate of service was filed electronically on April 25, 2008 (E.D.T.), indicating such mail
 5 service as required by LR Appendix A(11). *See* Docket Entry 47.

6 Although plaintiff claims he did not receive this document in the mail until April 30,
 7 2008, it is respectfully requested that his *ex parte* motion to strike the individual defendants'
 8 reply as a result of this delay be denied. The individual federal defendants' motion was timely
 9 filed, and plaintiff has not shown that he was prejudiced by any delayed receipt of the document.

10 **Conclusion**

11 Accordingly, plaintiff's *ex parte* motion to strike the reply brief filed in support of the
 12 individual federal defendants' motion to dismiss should be denied.

13 Respectfully submitted,

14 JEFFREY S. BUCHOLTZ
 15 Acting Assistant Attorney General
 16 Civil Division

17 /s/ C. Salvatore D'Alessio, Jr.
 18 C. SALVATORE D'ALESSIO, JR.
 19 Senior Trial Attorney, Torts Branch

20 /s/ Virginia G. Lago
 21 VIRGINIA G. LAGO
 22 Attorney Advisor, Constitutional Torts Staff

23 Attorneys for the individual federal defendants

24 **Certification of Service**

25 I certify that on April 30, 2008 (E.D.T.), this *Response to Plaintiff's Ex Parte Motion to*
 26 *Strike from the Record the Filing by Federal Defendants of Their Reply in Support of Federal*
 27 *Defendants' Motion to Dismiss Without Leave to Amend* was filed electronically. Notice of this
 filing will be sent by e-mail to all parties registered to receive electronic filing by operation of
 the court's electronic filing system. Parties not indicated to have been electronically served on
 the Notice of Electronic Filing will be served with a paper copy of this filing via regular first
 class U.S. mail, postage prepaid. Parties may also access this filing through the court's Case
 Management (CM) / Electronic Case Filing (ECF) system.

28 Signed: C. Salvatore D'Alessio, Jr.